

## CONSUMER FINANCE BULLETIN 1991-1

### INFORMATIONAL AND INTERPRETIVE STATEMENT

TO THE MORTGAGE BROKER, LENDER, AND/OR SERVICER LICENSEE OR REGISTRANT ADDRESSED:

SUBJECT: DEFINITION OF FULL-TIME EMPLOYEE UNDER THE  
MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT

Section 2 of the Mortgage Brokers, Lenders, and Servicers Act, Act No. 173, P.A. 1987, as amended (Act), provides in part that:

“A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act, unless the person is solely performing services as a full-time employee of a mortgage broker, mortgage lender, or mortgage servicer or the person is exempted from the act pursuant to section 25...” (Emphasis added.)

Several questions have been raised as to the definition and applicability of the term “full-time employee” as it is used in the Act. The purpose of this bulletin is to clarify the Bureau’s position and provide an interpretation of the term “full-time employee.”

#### BUREAU POSITION

It is the Bureau’s position that the term “full-time employee” as used under section 2 of the Act denotes a typical employer-employee relationship. This relationship would normally include the following: the payment of wages on a salaried or hourly basis, accompanied by the issuance of an IRS W-2 form; withholding by the employer of employee income and social security taxes; employer-provided insurance and other benefits; and direct control and supervision by the employer over the employee’s activities. Persons compensated on a commissions-only basis normally would not fall within this definition, and would be required to individually obtain the appropriate license or registration under the Act.

The definition of “full-time employee” as used in the Act does not necessarily depend on the number of hours worked. An employee could be considered full-time, within the meaning of section 2, even if the person works less than 40 hours per week, provided that the person is not employed by more than one person engaged in a mortgage broker, mortgage lender, or mortgage servicer business and provided all of that person’s employment time is spent working for that employer. There is no public policy reason for requiring an employee that works for 30 hours for one mortgage employer to be licensed while an employee that works for 40 hours for one employer is exempt. The concern of the legislature in enacting this provision was to require licensure unless the employee worked for only one employer in the mortgage business.

## STATE LICENSING AND REGISTRATION REQUIREMENTS

It is the responsibility of each licensee and registrant under the Act to ensure that its employees are in compliance with the Act, and that the loan correspondents and independent contractors with whom it deals are properly licensed or registered under the Act.

Persons currently acting as mortgage brokers, lenders, or servicers who are not full-time employees of a mortgage broker, lender, or servicer and who are not otherwise exempted from the Act pursuant to section 25, must promptly apply for licensure or registration under the Act. To ensure compliance with the Act during the processing of an individual's application, licensees and registrants must make these individuals full-time employees of the licensee or registrant or the individuals must cease conducting any activities that would require licensure as a mortgage broker, lender or servicer under the Act. Assuming section 25 of the Act does not apply, the affected individuals have no authority to act as mortgage brokers, lenders, or servicers absent a license or the "full-time employee" status.

If licensees and registrants choose to establish full-time employee relationships on an ongoing basis, separate licensing or registration of those individuals would not be required under the Act.

Further questions regarding this bulletin or specific licensing or registration requirements under the Act should be directed the Consumer Finance Division of the Financial Institutions Bureau at (517) 373-3420.

/s/

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Ann Gaultney, Director  
Consumer Finance Division

5/15/91

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Date

/s/

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Russell S. Kropschot  
Acting Commissioner

5/15/91

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Date